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FILE COPY

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No. 51

JAMES M. WRIGHT,

Petitioner,

vs.

THE UNION CENTRAL LIFE INSURANCE COMPANY AND WILLIAM T. REMMELL, TRUSTEE.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

APPELLANT'S SUPPLEMENTAL BRIEF.

WILLIAM LEMKE,
SAMUEL E. COOK,
Counsel for Petitioner.

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1940

No. 51

IN THE MATTER OF JAMES M. WRIGHT, DEBTOR.

JAMES M. WRIGHT,

Petitioner and Appellant,

vs.

THE UNION CENTRAL LIFE INSURANCE COMPANY, WILLIAM D. REMMELL, TRUSTEE,

Respondents and Appellees.

APPELLANT'S SUPPLEMENTAL BRIEF.

To the Honorable Charles Evans Hughes, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Preliminary.

Certiorari was granted in the above cause on May 20, 1940 (84 Law Ed. 901).

This Court granted appellant leave to proceed in *forma pauperis*. Under that, the petition for certiorari and the supporting brief, have been printed. This petition and supporting brief are still before the court and we ask that

they be considered by it in passing on the merits of the questions presented by the record.

It has not been disputed but that the appellant has taken all of the steps necessary to bring his case before this Court and that his brief in support of his petition is in proper form and shows the jurisdiction of this Court and the errors relied on for reversal.

A decision of this Court handed down since the petition and briefs were filed, and further investigation of the authorities, have brought out further reasons why the judgment of the Court of Appeals should be reversed.

Hence, the appellant now submits the following supplemental brief to be considered with the supporting brief:

Point 30. The last point in the original brief is 29, hence we start with the above.

This being a remedial statute to save American farm homes, it must be liberally construed to carry said purpose and the courts in construing and applying it must not allow anything to stand in the way of giving the farmer the benefits of the act. Hence, the court erred in forfeiting the land in the case at bar because the debtor could not refinance himself within the three years.

John Hancock Mutual Life Ins. Co. v. *Bartels*, 308 U. S. 180, 84 L. Ed. 154.

Point 31. When does the period of redemption expire in the case at bar? Subsection (n) was amended by the Act of August 28, 1935. 11 U. S. C. A. 203 (n). It provides: * * * "The period of redemption shall be extended * * * for the period necessary for the purpose of carrying out the provisions of this section." Clearly meaning section 75 as amended by adding amended subsection (s). This made that period elastic and extended it until the provisions of the section were carried out. One of the provisions of that section is paragraph (3) (s). It provided that the debtor

may request and the court is commanded * * * to "cause a re-appraisal of the Debtor's property" * * * or "in its discretion set a date for hearing and after such hearing, fix the value of the property in accordance with the evidence submitted" (11 U. S. C. A. 203 (3) (s)). In a way the court took the first step by hearing evidence and it fixed the value of the land at $6,000.00. It halted on the next by refusing to enter an order that when the debtor paid that sum into court it would—"thereupon" * * * "by an order, turn over full possession and title of said property "free and clear" of incumbrances to the Debtor." The debtor would have to make a loan to do this. It is evident that the first step to clear the way to rehabilitation or redeeming the land would be for the court to make an order providing for the appraisement and that the debtor be allowed to redeem by allowing him to pay that sum into court and that when that was done, the latter would * * * "by an order, turn over full possession and title * * to the Debtor" and also discharge him of the remainder of the debt." All courts have the implied power to make appropriate orders to carry out an Act of Congress. How else could the relief granted here, have been carried out. This provision and question was properly before the District Court and it ignored it. It made no finding thereon. This is one of the provisions of paragraph (3) (s) and the court refused to pay any attention to it. A failure of the court to find on a proper issue, is a finding against the debtor on that point. All the debtor could do was to request this appraisement and for an order allowing him to redeem at the appraised value and when that was paid in, that the court would enter an order turning the land over to him and discharge him of the balance. He could not make the court do this. No part of the machinery of the Act would move a cog until the court made such an order. It was the only power on earth that

could start that machinery. It refused to start the machinery and thereby refused to carry out the vital provisions of this Act and according to its provision, the period of redemption will not begin to run until the court enters such an order. Time can not be counted against the debtor on the period of redemption until he is given a chance to redeem and refuses so to do. The creditor can not obstruct the action of the court and have it refuse to enter such an order and then say the period of redemption has run. A litigant can not take advantage of its own wrong.

Hence, it is clear the court had no power to refuse to carry out this provision of the Act and end the period of redemption and arbitrarily take the land from the debtor and by making it possible for it to bid its whole debt at said sale and thereby defeat rehabilitation and deprive the debtor of the benefits of the Act.

Point 32. The refusal of the court to give the debtor the benefits of this Act—the right to redeem—makes its order terminating the period of redemption utterly null and void.

Point 33. The District Court and Court of Appeals were bound to know that the action denying the debtors right to redeem unless he paid $16,000.00 for $6,000.00 worth of land made redemption and rehabilitation utterly impossible and thereby aided the creditor to defeat the purpose of Congress to effect rehabilitation.

This Court has denounced such action and held the court could enjoin it.

Wright v. *Union Central,* 304 U. S. 502, 82 L. Ed. 1490 (1501).

Point 34. It must not be overlooked that this elastic extension of the period of redemption in amended subsection (n) by the Act of August 28, 1935, was before this Court in *Wright* v. *Union Central,* 82 L. Ed. 1490 (1501), and the

Court said: "We do not think the provision for extension of the period of redemption in section 75 (n) is invalid." If Congress did not have the power to bring this debt of $16,000.00 down to the real value of the security and allow the distressed debtor to redeem his home at its present value and discharge him of the balance, then the delegation of the power—"To establish * * * uniform laws on the subject of Bankruptcies throughout the United States," would be in vain. It would destroy that part of the Constitution and likewise destroy the independence of Congress which is charged with the obligation of carrying out that great instrument: "To make all laws which shall be necessary and proper for carrying into execution the foregoing powers."

And also strip Congress of the power to adopt such means as it deems necessary to execute its Constitutional powers.

The action of the courts below in allowing this powerful creditor to defeat the purpose of this Act of Congress by arbitrarily demanding a sale of the property, results in making it a power higher than the government. It can not be. It never should be that Congress in the exercise of its great power over this subject is so feeble that it can not require a creditor to take the value of his security in order to make it possible for a farmer debtor to save his home. He has been the backbone of our great democracy since Lexington and will never desert it.

Let us not be deceived: Every part of the record in this cause shows, as plain as day, that it is the sole purpose of this powerful creditor to take this home from this debtor and defeat his right to redeem it under this humane remedial Act of Congress and turn him and his family out on the highways.

This Court has held that Congress has the power to provide for the rehabilitation and reorganization of the farmer debtor. This can not be done in this case except by allow-

ing him to redeem his land at its present value and discharge him of the balance of his oppressive indebtedness and "permit him to start afresh."

Wright v. *Union Central,* 304 U. S. 502, 82 L. Ed. 1490 (1499-1500-1501).

Point 35. Since the petition and supporting brief were filed in this case, this Court has decided *Borchard* v. *California Bank* (May 20, 1940), 84 L. Ed. Adv. Op. 867. This decision is in line with the ground taken by this Court in the *Bartels* case and the *Kalb* case in favor of a proper construction of this remedial Act for the relief of the "distressed farmer Debtor."

We rely on that decision. It sustains the debtor's position in this case and rejects the position of the creditor and condemns the judgment rendered herein.

Point 36. Since we have established above that the period of redemption is not definite but elastic and can not begin to run until the provisions of Section 75 paragraph (3) are granted—i. e., the right given therein to redeem, and the obligation of the court to allow the debtor to have the value of the land fixed and the obligation of the court to carry the Act out by an appropriate order allowing him to redeem at the appraised value, so that he can secure a loan with which to redeem. That is the very first thing the court must order or he never can raise the redemption money. Hence, until the court makes such an order under said section he will be as helpless as a child to secure a loan with which to redeem. The second vital step is an order of the court providing when the appraised value is paid into court, the latter will discharge the balance of the debt. No one would loan him five cents until he can make his title good. His title will not be good until he can show this mountain of debt of $10,000.00 is removed. It would drive

away all of the loan agents in Indiana until he had an abstract showing an order of the District Court that the debt will be brought down to meet the value of the land and that the balance would be discharged. That is what this Court in the *Wright* case meant in speaking of relieving him of oppressive indebtedness and permitting him to start afresh.

Wright case, 82 L. Ed. 1490 (1499-1500-1501).

Point 37. We state again that as long as the period of redemption has not ended the debtor has the right to redeem and until it does end the court can not forfeit the land and take it from him and sell it.

Point 38. How does the *Borchard* case settle the case at bar? In that case the period of redemption had not expired. The mortgage debt was over $89,000.00. The court found the land was only worth $65,000.00. Over $24,000.00 of a deficiency. The bank while the period of redemption still existed, as here, applied to the District Court and showed that the debtors could not pay the debt and that it should be allowed to sell the land to save further loss. The District Court so ordered. The Court of Appeals affirmed the decision below. This Court reversed the Court of Appeals, holding that the action of the District Court permitting a sale at this stage of the proceedings (before the period of redemption had expired) was contrary to the provisions of section 75 (s).

Borchard case, 84 L. Ed. 867 (870).

Point 39. The court placed its decision on the ground that the period of redemption had not expired and that the debtor was entitled to remain in possession of his land during the period of redemption. In other words, as long as the right to redeem exists there can be no sale of the land ordered.

Borchard case, 84 L. Ed. 867 (870).

Point 40. Here was a possibility of the creditor having to scale its debt down over $24,000.00 and with that before it this Court significantly stated:

> "As pointed out in the Wright Case, supra, the secured Creditor's rights are protected to the extent of the value of the property."
> *Borchard* case (870).

This Court meant by that that the $89,000.00 debt was only worth $65,000.00, the value of the security.

The decision in the case at bar is in the teeth of and so conflicts with the later decisions in the *Bartels, Kalb,* and *Borchard* cases that it can not stand and will have to be reversed to bring about uniformity in the decisions on the meaning and construction of this remedial Act.

Point 41. The court in the *Borchard* case termed the proceedings to sell the land before the end of the period of redemption as "disorderly and unauthorized."

Point 42. It must not be overlooked that there is not a single cause found by the court in the special findings which of itself would authorize the court to end the period of redemption and forfeit the land and order it sold at public auction. Hence, the only remaining reason is that the court ended the period of redemption and ordered a sale because the creditor demanded it. Congress never intended that in the face of a request of the debtor for an appraisement and right to redeem which is one of the provisions of the Act—the creditor could defeat that request by demanding a public sale without giving any reason in a court of equity for it. Congress intended the court should hear the evidence and not grant it if it would defeat his right to redeem and save his home. The court erred in not giving the debtor the preference and in not holding that the alleged right be subordinate to the right to save the land.

Point 43. The other alternative in construing the Act is that it was the duty of the court to carry out the Act, bring the debt down to the value of the security, and allow the debtor to redeem. The court should have disregarded the provision which purports to give it that right and held it so repugnant to the purpose of the Act as to wholly defeat it and hence was null and void.

Point 44. But someone will say that is asking a great deal to request this great court to deliberately reject a clause inserted in an Act of Congress. That that is radicalism run wild. The very opposite is true and the sound doctrine and it would be wrong to refuse such a thing. This contention is based upon reason and all of the authorities and no authority can be found which denies or rejects that doctrine, as a sound legal principle.

Point 45. This Court has two great powers conferred upon it: (1) To declare Acts void as repugnant to the Constitution, and (2) To construe the language of the Act and cast that out which would defeat it and make the result an absurdity.

In that kind of a case the language of the Act says such is the law. But the court must say notwithstanding the language of Congress it is not the law. It is void. Is that any different than the Act in question here? No. True, the language purporting to give the creditor the right to defeat this Act is there. But taken literally it would defeat the whole purpose of the Act and make the body of the Act no law at all and a farce and a sham. Hence, it is not the law. The body of the Act excludes it. "*Expressio unius est exclusio alterius.*" It gives the right to save farm homes and this discordant language (like a discord in music throws the whole tune out of harmony) perverts it into an Act to take farm homes from insolvent farmers and set them out

in the highway. A construction of this language so as to allow a creditor to thus defeat the purpose of Congress, leads to such an absurdity as to instantly impel the court to reject and cast it out. It is absurd to contend Congress ever intended to stultify itself with such an absurdity. When the farmer asked for "bread" it handed him a "stone" and when he asked for a "fish" it gave him a "serpent".

No, it is not radicalism to exclude this discordant language, but would be rank error to consider it at all.

Congress has no power to pass a law in one sentence and in the next destroy it. That which purports to defeat the law is no law at all and is no part of the Act.

"The intent of the lawgiver is the law" and it would be a reproach on the courts for them to allow anything to stand in its way.

Point 46. Congress has no judicial power. Its sole power is to enact laws. Not to construe them. The exclusive power to construe them resides in this Court. It is the "*ultima ratio*" as to the meaning of an Act and must determine whether any part of it is so repugnant and discordant as that it can not stand and will have to be disregarded in order to carry out the great purpose of the Act.

Point 47. This is not visionary but the law as laid down by the decisions of this Court and the existing standard text books on the subject of—"Of Statutory Construction".

It starts with Blackstone. In the first edition of American and English Encyclopaedia of Law, 176 pages are devoted to—"Interpretation and Construction" of statutes. In the Digest of the decisions of this Court there are 19 pages. In the last edition of *Corpus Juris* there are 150 pages. In Ruling case Law there are 97 pages. American Digest Decenial, 306 pages. Then there is the great work of Lewis-Sutherland Statutory Construction. All of them

recognize the doctrine that courts have the power to exclude and disregard repugnant clauses which would defeat the manifest intent of the law-making body.

Point 48. Let us go back to the record and restate the real question before this Court:

The first clause of Paragraph (3) of amended subsection (s) of Section 75 provides in substance. (1). That at or prior to the period of three years the Debtor may pay into court the amount of the first appraisal of the land. (2). That upon request of the Debtor the court shall appoint appraisers to make a second appraisement of the land or the court should hear evidence and fix the value of the same. This would also require the court to make an order that the Debtor be allowed to redeem at said value and that when that was paid into court the latter would turn the property over to him free of the mortgage debt. This would also require an order of the court discharging him of the debt exceeding the value of the security. (3). The next clause purports to give the Creditor the arbitrary right to request a sale and on its face requires the court to make such an order.

(11 U. S. C. A., 203 (s) (3)).

We have shown that in the judgment in this case that none of the provisions of the Act authorized the court to end the case and order the land sold for any of the alleged reasons set out in the finding. Hence, the only thing left was, it was ordered sold simply because the Creditor arbitrarily demanded it. That is the court used the 3rd. clause to defeat the right to redeem at the appraised value. We contend that Congress intended this Act should apply to cases like the one at Bar and that the court should have given the Debtor the preference and denied the sale and allowed him to redeem or that it should have held that the 3rd. clause

being directly opposite to the second, that giving it a literal construction would wholly defeat the right to redeem and defeat the whole purpose of Congress in enacting the law to save farm homes. That being so repugnant and conflicting the court should have wholly disregarded the 3rd. clause and given the Debtor the benefit of the Act and refused to take the land from him and sell it and require him to pay $16,000.00 for $6,000.00 worth of land.

Point 49. Let us call attention to some of the decisions which show that the court should have disregarded this 3rd. clause and allowed the Debtor to save his Home.

(a) "There are three points to be considered in the construction of all remedial statutes; the old law, the mischief and the remedy; that is, how the—law stood at the making of the Act; what the mischief was for which—the law did not provide; and what remedy the parliament hath provided to cure the mischief. And it is the business of the Judges to so construe the Act as to suppress the mischief and advance the remedy."

Blackstone (87).

"A saving, totally repugnant to the body of the Act is void."

Ibid, p. 89 (Star).

"Lastly, Acts of parliament that are impossible to be performed are of no validity and if there arises out of them collaterally any absurd consequences, manifestly contrary to common reason, they are, with regard to those collateral consequences, void."

Blackstone (91).

We quote the rule as laid down by Lewis-Sutherland Statutory Construction Vol. 2 (2d) 376 (322), p. 721 and other authorities:

"The mere literal construction of a section in a statute ought not to prevail if it is opposed to the intention

of the legislature, apparent by the statute and if the words are sufficiently flexible to admit of some other construction it is to be adopted to effectuate that intention. The intent prevails over the letter, and the letter will if possible, be so read to conform to the spirit of the Act."

"As the intention of the legislature embodied in a statute, is the law, the fundamental rule of construction, to which all others, are subordinate, is that the Court shall by all aids available, ascertain and give effect to the intention of the maker."

59 *Corpus Juris*, 948-952. Many cases cited.

"But, when the intention (of the legislature) can be ascertained with reasonable certainty, words may be altered or supplied in the statute, so as to give it effect and avoid any repugnancy to or inconsistency with such intention."

23 American and English Enc., Law p. 419. Citing many cases.

"And since the office of a proviso is not to repeal the main provisions of the Act but to limit their application, no proviso should be so construed as to destroy those provisions. A construction of a proviso which would make it plainly repugnant to the body of the Act should be rejected if possible * * *. The true rule is that a proviso or saving clause which is directly repugnant to the purview or body of the Act is inoperative and void for repugnancy."

25 R. C. L., Section 232, pp. 986-987.

"We are of the opinion that where a proviso is wholly repugnant to the purview of the law, it is inoperative and void."

McKnight v. *Hodge*, 40th. L. R. A. (N. S.), 1207 (1213).

"Contradictory clauses in Acts will be deleted to give effect to clear legislative intent."

Cherry v. *Leonard*, 75 S. W. (2d) 401.

"Proviso which is repugnant to body of statute and which cannot be reconciled therewith, is void."

Reuter v. *Board*, 30th Pacific (2d) 417.

"Where intention and purpose of a legislative enactment is clear and unmistakable from consideration of whole Act, a proviso will not be given effect as written, when so to do would defeat the obvious legislative purpose and intent, nullify the other detailed provisions thereof, and reduce the Act as a whole to an absurdity."

Roseberry v. *Norsworthy*, 100 So. 514.

"In construing a statute every section, provision, and clause should be expounded by reference to every other, and, if possible, every clause and provision be given and have the effect contemplated by the legislature. One portion of a statute should not be construed to annul or destroy what has been clearly granted by another."

Peck v. *Jennes*, 7 How. 612, 12 L. Ed. 841.

a. A construction of a statute producing absurdities, or consequences in direct violation of its own provisions, is to be avoided.

Huidekoper v. *Douglass*, 3 Cranch 1, 2 L. Ed. 347.

c. In case of doubt a literal construction leading to an absurdity will be rejected in favor of a more liberal one which will effectuate the object intended.

Wilson v. *Mason*, 1 Cranch 45, 2 L. Ed. 29.

We quote from *Hawaii* v. *Mankichi*, 47 L. Ed. 1016 (1021) (190 U. S. 197):

"Without going back to the famous case of the drawing of blood in the streets of Bologna, the books are full of authorities to the effect that the intention of the lawmaking power will prevail, even against the letter of the statute, or, as tersely expressed by Mr. Justice Swayne in Smythe *v.* Fiske, 23 Wall. 374, 380; 'A thing may be within the letter of a statute and not within its meaning

and within its meaning, though not within its letter. The intention of the law-maker is the law.' A parallel expression is found in the opinion of Mr. Chief Justice Thompson of the Supreme Court of the State of New York. (Subseqnently Mr. Justice Thompson of this Court,) in People *v.* Utica Ins. Co., 15 Johns 358, 381: "A thing which is within the intention of the makers of the statute is as much within the statute as if it were within the letter; and a thing which is within the letter of the statute, is not within the statute unless it be within the intention of the makers."

"All laws," said the Court, "Should receive a sensible construction. General terms should be so limited in their application as not to lead to injustice, oppression, or an absurd consequence. It will always, therefore, be presumed that the legislature intended exceptions to its language, which would avoid results of this character. The reason of the law in such cases should prevail over its letter."

Statutes should not be literally interpreted at the expense of the reason of the law and producing absurd consequences or flagrant injustice."

Sorrells v. *United States*, 287 U. S. 435, 53 S. Ct. 210; 77 L. Ed. 413.

"If a literal interpretation of any part would operate unjustly, or absurdly, or contrary to the meaning of the Act, it should be rejected. The construction must be such that the whole can stand if possible. There is no better way of discovering the true meaning of a law when there are expressions in it which are rendered ambiguous by their connection with other clauses, than by considering the necessity for it and the causes which induced the Legislature to pass it."

Heydenfeldt v. *The Daney*, 93 U. S. 634, 23 L. Ed. 996.

"On the contrary it (the statute) should be interpreted and enforced by the light of the fundamental rule of carrying out its purpose and object, of affording the remedy which it was intended to create and defeat-

ing the wrong which it was its purpose to frustrate."
Rhodes v. *State*, 42 L. Ed. 1094.

The sole purpose of this Act of August 28, 1935, was to save American farm Homes. To regard the 3rd clause here and allow the Creditor to demand a sale, will kill the right to redeem at the appraised value as dead as Julius Caesar and defeat the whole Act and make it no law at all.

This 3rd clause gains no force or priority because it happens to be the last clause in question.

Ruling Case Law Sec. 251, P. 1011-1012.

"Where one section of a statute conforms the obvious policy and intent of the legislature it is not rendered inoperative by inconsistent provisions in a later section which do not conform to this policy and intent."
Ruling Case Law Sec. 251, P. 1012.

"But when the Court is confronted with an ambiguity, or an absurdity would arise from giving the language its ordinary meaning, the rules of construction are invoked to ascertain the true legislative intent, and the letter of an act may be sacrificed only so far as is necessary to give effect to such intent."
23 Am. & Eng. Encyc., P. 412.

"And, on the other hand, words and phrases which might operate to defeat the clear purpose of a statute, or which would have no sensible meaning, should be eliminated; notwithstanding the rule that full effect must be given to every part of a statute."
23 Am. & Eng. Encyc., P. 420.

"There is a strong presumption against absurdity in a statutory provision; it being unreasonable to suppose that the legislature intended their own stultification. So, when the language of an Act is susceptible of two senses, that sense will be adopted which will not lead to absurd consequences."
23 Am. & Eng. Encyc., P. 362.

The mere statement of these points and the quotations from the above authorities are an argument of themselves and further argument would be largely a matter of repetition.

Enough has been said. That this is an important case can not be denied. It will touch every agricultural section of our great Country, and will be discussed around the firesides of American farm Homes. If the farm Debtor is entitled to redeem his home on the basis of the present value of the land, it will lift a great load from the shoulders of those who till the soil and are crushed down by "oppressive indebtedness" and enable thousands to retain their homes and the savings of a life-time. Then too, it will enable this class "to start afresh" and step forth as independent men and women able to look the whole world square in the face. On the other hand, to be deprived of this relief will drive thousands and their families from their homes, and force them out into the world in their old days. They will "leave hope behind."

We hope our presentation of the questions here have been such as to aid the Court and lighten its great labors.

Respectfully submitted,

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